

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 3:07-cr-142
Also 3:11-cv-023

-vs- : District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

WILLIAM J. PIKE, JR.,

Defendant.

TRANSFER ORDER

This case is before the Court on Defendant's Motion to Vacate a [sic] Absolute Void Judgment (Doc. No. 58). On its face, the Motion purports to be brought under 28 U.S.C. § 2255. Defendant previously filed a § 2255 motion in this Court on October 28, 2010 (Doc. No. 50). That Motion has been finally adjudicated, with judgment entered just two weeks ago on January 5, 2011 (Doc. Nos. 56, 57.)

This is thus a second § 2255 Motion. Under § 2255(h), a second motion cannot proceed without prior certification from the Court of Appeals, which Defendant has not obtained. In *In re Sims*, 111 F.3d 45 (6th Cir. 1997), the Court of Appeals was faced with the question what a district court should do when a habeas petitioner seeks permission to file a second or successive petition, but improperly seeks permission from the district court. It answered by following the Second Circuit's decision in *Liriano v. United States*, 95 F.3d 119 (2nd Cir. 1996), that such a motion should be transferred to the Court of Appeals under 28 U.S.C. §1631.

While Defendant filed without seeking permission from this Court of the Court of Appeals,

he is a *pro se* litigant entitled to liberal construction of his pleadings. *Haines v. Kerner*, 404 U.S. 519 (1972). The Court accordingly treats the instant Motion as seeking permission to file a second § 2255 Motion and orders that it be TRANSFERRED to the United States Court of Appeals for the Sixth Circuit for determination of whether permission to proceed will be granted.

January 20, 2011.

s/ **Michael R. Merz**
United States Magistrate Judge